

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 30

Date Signed: February 20, 1987

MEMORANDUM

SUBJECT: Availability of Exemptions under Section 1416(b)(2)(A) of SDWA, as amended, (40 CFR 142.55); Information Memorandum

FROM: Michael B. Cook, Director  
Office of Drinking Water (WH-550)

TO: Regional Water Supply Branch Chiefs  
Regions I-X

EPA is about to issue a "Final Codification Rule." This rule will amend the existing drinking water regulations (40 CFR Parts 141, 142, and 144), to reflect changes engendered by the 1986 Amendments to the Safe Drinking Water Act. The Codification Rule includes variance and exemption sections, among others. The Variance and Exemption (V&E) Work Group has been tasked with revising the guidance for the issuance of variances and exemptions, originally issued in May, 1979. The purpose of this memo is to inform you of our action plan for guidance development, summarize what it will encompass, and discuss one V&E issue on which several Regions requested clarification.

I propose to have a rough first draft of the guidance available for discussion at the ASDWA Board meeting in San Diego, CA, on February 24, 1987. After addressing any issues that arise at the meeting, and incorporating any comments, we will send you a draft guidance for review and comment by late March. Once comments are received and addressed, we will develop the final guidance. Our goal is to issue the final guidance by July.

Briefly, the guidance will contain a preface and five main sections. The first section will summarize conditions for granting variances and exemptions. The second section will delineate economic factors for granting exemptions and will include guidelines for determining affordability. The third section will include guidelines for determining unreasonable risk to health, and the last two sections will include variance and execution procedures and guidance on compliance agreements.

A number of Regions have requested clarification on the issue of the "one year window of opportunity" to receive an exemption from an existing MCL. The statutory language in section 1416(b)(2)(A)(i) states that a schedule for compliance with an exemption from an existing MCL must require compliance "...not later than 12 months after enactment of the SDWA Amendments of 1986," (i.e., June 19, 1987).

**\*May need to be updated to reflect new V&E rule.**

Section 1416(b)(2)(B), however, allows the final date for compliance to be extended "...for a period not to exceed three years after the date of the issuance of the exemption" (except that exemptions for small systems may be renewed for one or more additional two-year periods).

There are three possible interpretations of the "window" available to EPA/States in granting exemptions:

1. An exemption may be granted only until June 19, 1987; the exemption must require compliance before June 19, 1990 (except for small systems).
2. An exemption may be granted at any time until June 19, 1990, as long as it requires compliance by June 19, 1990 (except for small systems).
3. An exception may be granted at any time, as long as it requires compliance within three years of issuing the exemption (except for small systems).

I believe Congress intended to put a cap on exemptions from existing standards. If EPA/States could grant an exemption from these standards at any time, as long as it requires compliance within three years of issuing the exemption (i.e., interpretation 3), it would render the June 19, 1987 date meaningless. Also, Congress assumed that all interim standards would be revised by the June 19, 1989 deadline in section 1412 so exemptions for interim MCLs would no longer be necessary.

After considering the remaining two interpretations, I have decided that number 2 (i.e., an exemption may be granted to a system in violation of any existing interim MCL at any time until June 19, 1990, as long as it requires compliance by June 19, 1990, except for small systems) is the more practicable of the two interpretations. This gives the primacy agency feasibility by allowing it to grant exemptions at any time until June 19, 1990. As noted above, this exemption guideline applies to existing MCLs only (including fluoride).

The guidance for the issuance of variances and exemptions, will contain more detailed information concerning the above approach. In general, primacy agents should be advised to exercise caution in granting exemptions to public water supplies with a history of unresolved major violations of existing standards.

If you have any questions on the issuance of exemptions or have other issues that require clarification, please contact John Trax at 382-5526. Other questions related the contents of the guidance document may be directed to John or to Craig Vogt, at 382-7575.

cc: Meg Silver